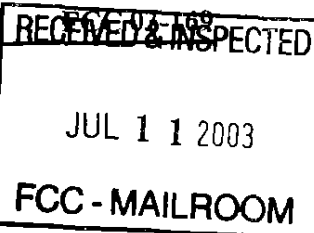


Federal Communications Commission



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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. <u>03-66</u> RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service)	MM Docket No. 97-217
Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	

ORDER

Adopted: July 10, 2003

Released: July 10, 2003

By the Commission:

1. On April 2, 2003, the Commission released a *Notice of Proposed Rulemaking and Memorandum Opinion and Order (NPRM/ MO&O)* in this proceeding.¹ Pursuant to Section 1.108 of the Commission's Rules, on our own motion, we issue this limited reconsideration of the *NPRM/MO&O* by (1) replacing paragraph 201 (which addresses applications for extension of time to construct) with the language set forth herein, and (2) clarifying our action with respect to Section 21.930 of the

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722 (2003).

Commission's Rules,² which sets forth the build-out requirements for Multipoint Distribution Service (MDS) Basic Trading Authorization (BTA) holders.³

2. *Pending Applications for Extension of Time to Construct.* With respect to pending applications for extensions of time to construct, we take this action in light of information that has come to our attention since the adoption and release of the *NPRM/MO&O*. Specifically, in connection with petitions for reconsideration of our decision to impose a freeze on the filing of applications for new MDS and Instructional Television Fixed Service (ITFS) stations, as well as major changes to such stations, entities have represented to us that they have developed plans in the near future to deploy high-speed wireless broadband systems under our existing rules.⁴ For example, WCA estimates that approximately thirty wireless broadband operators plan to deploy systems in approximately eighty markets in the next twelve months.⁵ In light of this information, we are concerned that our decision to seek comment on how to treat pending applications for extensions of time to construct MDS and ITFS stations may hinder the deployment of MDS and ITFS systems aimed at providing broadband services. As noted in the *NPRM/MO&O*, one of our primary goals in this proceeding is to "present a significant opportunity to provide alternatives for the provision of broadband services to consumers in urban, suburban and rural areas and to improve opportunities for distance learning and telemedicine services."⁶ Under those circumstances, we believe that it would be in the public interest to be able to act on those pending applications for extension of time to construct prior to the completion of this proceeding. We believe that promptly acting on such applications will provide for greater regulatory certainty and thereby facilitate continued deployment of broadband services and promote innovation and investment therein. As a result, we are no longer seeking comment in the *NPRM/MO&O* on the treatment of pending applications for extensions of time to construct MDS and ITFS stations.

3. Accordingly, we delete paragraph 201 of the *NPRM/MO&O* and replace it with the following language:

201. *Extension/Suspension of current performance requirements for site-based licensees.* Moreover, we also believe that it is in the public interest to suspend the construction deadline for ITFS and MDS site-based licensees and permittees that have unexpired licenses or permits that have not expired as of the release date of the *NPRM & MO&O* and that have made a timely filed extension request. We emphasize that the suspension of this construction deadline for site-based licensees does not affect the requirement for such licensees to timely file a renewal application.⁴⁹¹ We stress that all site-based licensees are required to timely file renewal applications or face cancellation of their licenses regardless of the pendency of this proceeding.

² 47 C.F.R. § 21.930.

³ 47 C.F.R. § 1.108 provides that the Commission may, on its own motion, set aside any action take by it within thirty days of the date of public notice of the action. In this case, public notice of the *NPRM/MO&O* was given on June 10, 2003, when it was published in the Federal Register. See 47 C.F.R. § 1.4(b)(1); Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, 68 Fed. Reg. 34560 (2003). Since this order is being adopted on July 10, 2003, this action is timely.

⁴ See petitions for reconsideration filed by Wireless Communications Association International, Inc. and Plateau Telecommunications, Inc. (filed Apr. 7, 2003 and Apr. 8, 2003, respectively) and supporting comments.

⁵ See Ex Parte Presentation from Paul J. Sindebrand, Esq. to Secretary, Federal Communications Commission (filed Apr. 23, 2003) at 2.

⁶ See *NPRM/MO&O*, 18 FCC Rcd at 6722 ¶ 1.

4. We note that we are not modifying our decision to hold in abeyance the construction build-out requirements for site-based incumbents that have licenses or permits that had not expired as of the release date of the *NPRM/MO&O*.⁷ Furthermore, we continue to seek comment on whether we should change criteria for granting extension of time requests prospectively.⁸

5. *MDS BTA Build-Out Rule.* In the *NPRM/MO&O*, we "suspended" the August 16, 2003 construction deadline for MDS BTA authorization holders contained in Section 21.930 of the Commission's Rules.⁹ Upon further reflection, we believe that our use of the term "suspend" did not accurately reflect our intent in this matter. Our intent was to relieve MDS BTA authorization holders of the obligation to meet the build out deadline contained in Section 21.930 pending the release of a *Report and Order* in this proceeding. In order to more accurately reflect our intention, we are reinstating Section 21.930 of the Commission's Rules, but stating that MDS BTA authorization holders do not have to meet the build out obligations contained in that rule pending the release of a *Report and Order* in this proceeding. We continue to seek comment on how much additional time MDS BTA authorization holders should receive to meet their build out obligations after a *Report and Order* is issued in this proceeding.


6. The actions contained herein have not changed our Initial Regulatory Flexibility Analysis (IRFA), which was set forth in the *NPRM/MO&O*. Thus, no supplemental IRFA is necessary. In addition, the action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

7. Accordingly, IT IS ORDERED, pursuant to Sections 403 and 405 of the Communications Act of 1934, 47 U.S.C. §§ 403, 405, and Section 1.108 of the Commission's Rules, 47 C.F.R. § 1.108, that the *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 03-56, IS MODIFIED as set forth herein.

8. IT IS FURTHER ORDERED, pursuant to Sections 403 and 405 of the Communications Act of 1934, 47 U.S.C. §§ 403, 405 that Section 21.930 of the Commission's Rules, 47 C.F.R. § 21.930, IS REINSTATED.

9. IT IS FURTHER ORDERED, pursuant to Sections 403 and 405 of the Communications Act of 1934, 47 U.S.C. §§ 403, 405, and Section 21.930 of the Commission's Rules, 47 C.F.R. §§ 21.930, that MDS BTA authorization holders NEED NOT COMPLY with the build out requirements contained in Section 21.930 of the Commission's Rules pending the release of a *Report and Order* in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

⁷ *Id.* at 6805 ¶ 201.

⁸ *Id.* at 6805 ¶ 202.

⁹ *NPRM/MO&O*, 18 FCC Rcd at 6805 ¶ 200. See also 68 FR 34547 (published Jun. 10, 2003).